

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 478

(Senators Shank and Getty)

Judicial Proceedings

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**Criminal Law - Contraband - Telecommunication Devices - Penalty**

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This bill (1) prohibits a person from attempting to deliver a telecommunication device to a person detained or confined in a place of confinement; (2) specifies that a sentence imposed for the knowing possession or receipt of a telecommunication device by a detained or confined person must be consecutive to any sentence that the person was serving at the time of the crime or that had been imposed but was not yet being served; and (3) classifies a second or subsequent violation of offenses pertaining to telecommunication devices in places of confinement as a felony, subject to increased penalties.

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**Fiscal Summary**

**State Effect:** Potential minimal decrease in general fund revenues as a result of the bill's reclassification of offenses from misdemeanors to felonies. Minimal increase in general fund expenditures due to the bill's penalty provisions. The bill's shifting of cases from the District Court to the circuit courts is not expected to materially affect District Court caseloads.

**Local Effect:** Potential minimal increase in local revenues from fines imposed in felony circuit court cases. Potential minimal decrease in local expenditures if individuals who would normally serve their sentences in local correctional facilities are sentenced to State correctional facilities as a result of the bill. It is assumed that any increase in circuit court caseloads as a result of the bill can be handled with existing local resources.

**Small Business Effect:** None.

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## Analysis

**Bill Summary/Current Law:** A “telecommunication device” is a device that is able to transmit telephonic, electronic, digital, cellular, or radio communications. “Telecommunication device” includes a part of such a device, regardless of whether the part itself is able to transmit.

A person detained or confined in a place of confinement may not knowingly possess or receive a telecommunication device. If signs are posted indicating that such conduct is prohibited, a person may not (1) deliver a telecommunication device to a person detained or confined in a place of confinement; (2) possess a telecommunication device with the intent to deliver it to a detained or confined person; or (3) deposit or conceal such a telecommunication device in or about a place of confinement or on any land appurtenant to such a place with the intent that the device be obtained by a detained or confined person. Under current law, a violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000.

**Exhibit 1** lists the changes to criminal penalties and offense classifications under the bill.

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### Exhibit 1 Changes to Offense Classifications and Criminal Penalties under the Bill

Offense	Current Penalties	Penalties under the Bill
Attempting to deliver a telecommunication device to a person detained or confined in a place of confinement	Not a separate statutory offense	First Offense: Misdemeanor. Up to three years imprisonment and/or a maximum fine of \$1,000  Second or Subsequent Offense: Felony. Up to five years imprisonment and/or a maximum fine of \$5,000

<b>Offense</b>	<b>Current Penalties</b>	<b>Penalties under the Bill</b>
<p>Delivering a telecommunication device to a person detained or confined in a place of confinement</p> <p>Possessing a telecommunication device with the intent to deliver it to a detained or confined person</p> <p>Depositing or concealing a telecommunication device in or about a place of confinement or on any land appurtenant to such a place with the intent that the device be obtained by a detained or confined person</p>	<p>Misdemeanor. Up to three years imprisonment and/or a maximum fine of \$1,000</p>	<p>First Offense: Misdemeanor. Up to three years imprisonment and/or a maximum fine of \$1,000</p> <p>Second or Subsequent Offense: Felony. Up to five years imprisonment and/or a maximum fine of \$5,000</p>
<p>Knowing possession or receipt of a telecommunication device by a detained or confined person</p>	<p>Misdemeanor. Up to three years imprisonment and/or a maximum fine of \$1,000</p>	<p>First Offense: Misdemeanor. Up to three years imprisonment and/or a maximum fine of \$1,000</p> <p>Second or Subsequent Offense: Felony. Up to five years imprisonment and/or a maximum fine of \$5,000</p> <p>Sentence must be consecutive to any sentence that the person was serving at the time of the crime or that had been imposed but was not yet being served</p>

Source: Department of Legislative Services

**Background:** The use of telecommunication devices by inmates is a growing problem in prisons throughout the country. Cell phones provide inmates with access to the outside world, and according to prison experts, an opportunity to continue to conduct criminal activity while incarcerated. Cell phones are a lucrative form of contraband because, unlike drugs, they have significant and perpetual resale and rental potential and value.

In April 2009, Patrick Byers was found guilty in Baltimore of the murder of Carl Lackl, Jr., a witness who had planned to testify against Byers during his trial for another murder. Byers used a contraband cell phone while in jail to order and arrange payment for Lackl's death.

Also in April 2009, 24 people, including gang members, 3 correctional officers, and 1 prison employee, were indicted in connection to the operation of a drug ring out of several Maryland prisons. The gang operated the ring with the assistance of contraband cell phones, which they allegedly obtained from the officers and a prison employee. In June 2011, a corrections officer who assisted the Black Guerilla Family gang by smuggling heroin and cell phones into a Baltimore prison through the laundry was sentenced to serve 37 months in federal prison for conspiracy to conduct and participate in the gang's racketeering enterprise.

The Department of Public Safety and Correctional Services (DPSCS) reports that it has confiscated over 2,000 cell phones since fiscal 2008. According to data from StateStat, 686 cell phones were found on Division of Correction (DOC) inmates or in DOC facilities in fiscal 2010, 723 in fiscal 2011, and 342 during fiscal 2012 (through October 2011). The Division of Pretrial Detention Services (DPDS) found 406 cell phones on inmates or in DPDS facilities in fiscal 2010, 571 in fiscal 2011, and 201 in fiscal 2012 (through September 2011).

DPSCS utilizes a variety of methods to find and confiscate illegal cell phones from inmates and in facilities. Entrance scanners, canine units, x-ray machines, searches, and intelligence units are some of the efforts currently in place.

In June 2008, Maryland started a program that uses dogs to sniff out cell phones. Dogs have found almost 500 cell phones in Maryland prisons since 2008. Virginia, California, Pennsylvania, and Arizona are among the other states that use such programs.

On October 5, 2009, the U.S. Senate passed the Safe Prisons Communications Act of 2009, which authorizes states to petition the Federal Communications Commission to jam or block the use of cell phones from prisons. The use of jamming or blocking technology is illegal under the Communications Act of 1934, which prohibits interference with commercial radio signals. Many states, including Maryland, South Carolina, and Louisiana, along with the District of Columbia, have petitioned the federal government to

test jamming technology. In February 2010, the first test of this technology took place at the Federal Correctional Institute in Cumberland. According to a press release issued by U.S. Senator Barbara Mikulski and Governor Martin O'Malley, test results indicate that the jamming technology did not interfere with federal operations of the prison within the testing area. DPSCS conducted follow-up demonstrations of nonjamming cell phone technology in December 2009.

In August 2010, President Obama signed the Cell Phone Contraband Act into law. The legislation classifies cell phones and wireless devices as contraband and bans the possession or use of these items by inmates in federal prisons. Anyone who provides or attempts to provide an inmate in a federal prison with a cell phone or wireless device could face imprisonment for up to one year. The Federal Bureau of Prisons confiscated more than 2,600 cell phones from minimum security facilities and approximately 600 from secure federal prisons in 2009.

**State Revenues:** Potential minimal decrease in general fund revenues as a result of the bill's reclassification of offenses from misdemeanors to felonies. In general, misdemeanor cases are heard in the District Court and felony cases are heard in the circuit courts. Fines imposed in District Court cases are general fund revenues; fines imposed in circuit court cases go to the appropriate local jurisdiction. Since the bill changes certain offenses from misdemeanors to felonies and transfers these cases to the circuit courts, any fine revenue from these cases will go to local jurisdictions.

**State Expenditures:** General fund expenditures increase minimally as a result of the bill's incarceration penalties due to people being committed to State correctional facilities for longer periods of time. The number of people subject to lengthier sentences as a result of the bill is expected to be minimal. According to the Maryland Sentencing Guidelines database, seven individuals were convicted of cell phone-related offenses in Maryland's circuit courts in fiscal 2011 and there were eight convictions in fiscal 2012. The average sentence for the 2011 convictions was imprisonment for 10.7 months.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,900 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable medical care and variable operating costs) is about \$370 per month. Excluding all medical care, the average variable costs total \$180 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be

served at a local facility or a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**Local Revenues:** Revenues may increase minimally from monetary penalties imposed in additional circuit court cases.

**Local Expenditures:** Expenditures may decrease minimally if individuals who would normally be sentenced to local correctional facilities are sent to State correctional facilities as a result of the bill. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

**Additional Comments:** Although this bill references DOC and DPDS, the Department of Legislative Services notes that DPSCS implemented a major reorganization during fiscal 2012. As a result of the reorganization, DOC, DPDS, the Division of Parole and Probation, and the Patuxent Institution no longer exist within the department by those names as separate budgetary units.

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### **Additional Information**

**Prior Introductions:** This bill is similar to bills introduced during previous sessions. HB 587 of 2012, HB 138 of 2011, and HB 78 of 2010 received unfavorable reports from the House Judiciary Committee.

**Cross File:** HB 651 (Delegate Cluster) - Judiciary.

**Information Source(s):** Baltimore, Charles, and Frederick counties; State's Attorneys' Association; Governor's Office of Crime Control and Prevention; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; *Baltimore Sun*; WBAL.com; CNN.com; U.S. Department of Justice; engadget.com; *Cumberland Times-New*; Governor's Office; National Conference of State Legislatures; Department of Legislative Services

**Fiscal Note History:** First Reader - February 15, 2013  
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